tion. In addition to the fact that services were or had been rendered to the first defendants over the entire four months save one day, learned counsel for the plaintiffs also pointed out that the claims for salaries in lieu of notices were based on the same contracts of services under which the services were rendered: the plaintiffs relied on these links.

Urging this court to give the words "in respect of" the widest ambit possible, as it was intended by the legislature, learned counsel for the defendants also referred to the legal position and case law history of the lack of any preferential status for claims of salaries in lieu of notices, which were analysed by past cases as really claims for damages. Learned counsel for the plaintiffs told me that section 328(2) was enacted by Act 15 of 1984 as a remedial statute because the position prior to its enactment was that salaries in lieu of proper notices of termination were not in law regarded as "salaries" within the ambit of section 328(1) but were regarded as damages: see *Re Leeds Twentieth Century Decorators*[1] and *Re VIP Insurances Ltd. and The Companies Act.*[2] Prior to this amendment, we had in Singapore the unfortunate situation that in a corporate failure, claims of workers for "salaries" in lieu of the proper notices were subordinated to floating charges under debentures who took all. Learned counsel for the plaintiffs reminded me what was stated in *Maxwell's* Interpretation of Statutes pp. 93-94: "The fact that a section is clearly designed to afford relief may incline the court to construe it more benevolently than it might a less obviously remedial enactment." This court, I was told by learned counsel, should adopt a construction of a statute "as shall suppress the mischief and advance the remedy: refer *Heydon's Case.*[3]"

This court was also invited to take an alternative approach. Learned counsel for the plaintiffs submitted that a distinction between the "salary" contemplated within section 328(1)(b), which must be earned, and the "salary" deemed to be included within its definition under section 328(2) which evidently could be earned by an employee. Bearing this distinction in mind, learned counsel for the plaintiffs urged me to hold that in a claim for salary in lieu of notice of termination, it is not necessary to comply with condition (b) as stated above, that is, it is not necessary to show that the "salary" claimed is in respect of services rendered by the employee to the company within a period of four months before the commencement of the winding up of such company. In this regard, learned counsel for the plaintiffs relied on the maxim that the law does not compel a man to do that which he cannot possibly perform: *lex non cogit ad impossibilia.*

I am persuaded by the cogency of the arguments advanced by learned counsel for the plaintiffs, Mr. Goh Kok Leong, to whose submissions I am greatly indebted. Accordingly, I accept his construction of the relevant provisions of the Companies Act and I would also adopt the alternative approach suggested.

There will be an order in terms of the originating summons. I would award interest on the said sum of $74,759.19 at 10% per annum calculated from September 6, 1985.

Claim allowed.

Solicitors: *Ang & Partners; Shook Lin & Bok.*

UNITED OVERSEAS BANK LIMITED v. TJONG TJUI NJUK

[O.C.J. (Chua J.) May 25, 1987]

[Singapore – Originating Summons No. 851 of 1986]

Practice and Procedure – Reciprocal enforcement of judgment – Application to set aside – Whether there was compliance with R.S.C., O.10 r.1(2)(b) (Hong Kong) – Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24).

Practice and Procedure – Writ of Summons – Service of writ enclosed in sealed envelope through letter box – R.S.C., O.10 r.1(2)(b) (Hong Kong) – Scope of.

Jurisdiction – "Carrying on business" – Non-active director with no office or place of business and non-resident – Whether "carrying on business."

The Judgment Debtor (the Debtor) in this case sought an order to set aside the registration of the judgment obtained in the Supreme Court of Hong Kong on December 18, 1985 (the original court) and registered as a judgment in the High Court of the Republic of Singapore pursuant to an order dated September 1, 1986. The Debtor and three others were each ordered to pay the creditor HK$99,350.58 with interest.

Service of the Writ of Summons was effected by inserting a true copy of the Writ of Summons enclosed in a sealed envelope duly addressed to the Debtor at her address in Hong Kong and inserting the sealed envelope through

the letter box for the Debtor's address on November 19, 1985. The Debtor, a Singapore citizen and resident in Singapore claimed that she had left Singapore to stay in Brunei. She said that she had no knowledge of the proceedings taken against her in Hong Kong and in Singapore and only found out about them sometime in December 4, 1986, when she returned to Singapore for a holiday.

Held, allowing the Debtor's application: (1) an agreement to submit to the jurisdiction of a foreign tribunal cannot be implied but must be made expressly. In the present case, the Debtor had not expressly submitted to the jurisdiction of the original court;

(2) the Debtor was not carrying on business in Hong Kong nor was she within the jurisdiction of the original court at the time the writ was purported to be served on the Debtor under Order 10 rule 1(2)(b).

(3) before the creditor can serve the writ on the Debtor in the manner provided for by Order 10 rule 1(2)(b), the Debtor must be within the jurisdiction of the original court. The Creditor had therefore not complied with the Rules of the Supreme Court of Hong Kong;

(4) the service was therefore bad and the registration of the said judgment should be set aside.

Cases referred to:

(1) *Blohn* v. *Desser* [1961] 3 All E.R.1
(2) *Emanuel* v. *Symon* [1908] 1 K.B. 302, 309.
(3) *Sfeir & Co.* v. *National Insurance Co. of New Zealand* [1964] 1 Lloyd's Rep. 330.
(4) *Vogel* v. *R & A Kohnstamm, Ltd.* [1971] 2 All E.R. 1428, 1439.
(5) *Sirdar Gurdyal Singh* v. *The Rajah of Faridkote* [1894] A.C. 670.

ORIGINATING SUMMONS.

Alvin Kheng Ann Tan for the Judgment Creditor.

Mrs. Ava Sidhu for the Judgment Debtor.

Cur. Adv. Vult.

Chua J.: By this Summons the Judgment Debtor (the Debtor) seeks an order that the registration of the judgment obtained in the Supreme Court of Hong Kong on December 18, 1985 (the original Court) and registered as a judgment in the High Court of the Republic of Singapore pursuant to an order dated September 1, 1986, be set aside.

By a judgment of the Supreme Court of Hong Kong dated December 18, 1985, in Suit 1985 No. A 7010 (the said Judgment), it was adjudged that the Debtor and three others each do pay the Judgment Creditor (the Creditor) the sum of HK $99,350.58 together with interest. The said Judgment is still wholly unsatisfied.

On the application of the Creditor it is ordered on September 1, 1986, that the said Judgment be registered as a judgment of the High Court of the Republic of Singapore pursuant to the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24) (the Act) and that the Debtor be at liberty to apply to set aside the said registration.

The Debtor's application to set aside the registration of the said Judgment is on the following grounds:

(a) that the Debtor was not duly served with the process of the original court and did not appear;

(b) that the Debtor was neither carrying on business nor ordinarily resident within the jurisdiction of the original court and did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of the original court;

(c) that the original court acted without jurisdiction; and

(d) that the judgment was obtained improperly or contrary to natural justice.

The Debtor is a shareholder and a director of Fine Grade Industrial Company Ltd, a Hong Kong registered Company (the said Company). In the Annual Return of the said Company made up to December 31, 1981, and filed with the Registrar of Companies, Hong Kong, the address of the Debtor is given as Block G, 9th Floor, Sheung Hong Garden, Sheung Shing Street, Kowloon, Hong Kong, whose occupation is given as housewife and whose nationality is given as Singapore Subject, and who holds 5000 shares of HK $10.00 each out of 50,000 shares taken up.

Service of the Writ of Summons was effected by inserting a true copy of the Writ of Summons enclosed in a sealed envelope duly addressed to the Debtor at her address in Hong Kong and inserting the sealed envelope through the letter box for the Debtor's address on November 19, 1985. The Creditor says that Order 10 Rule 1(2)(b) of the Rules of the Supreme Court of Hong Kong allows the service on the Debtor in that manner.

The Debtor says that she has been in Singapore since or on about May 3, 1986, and has gone to Brunei now and then for short periods but on or about August 10, 1986, she left Singapore and went to Brunei to stay. She says she has no knowledge of the proceedings taken against her in Hong

Kong and in Singapore and only found out about them sometime on or about December 4, 1986, when she returned to Singapore for a holiday. She says that she is a Singapore citizen and was residing in Singapore at 34 Balmoral Park during the proceedings taken against her in Hong Kong and she was not present in Hong Kong at the date of institution of proceedings in the original court.

The Debtor says that she did not receive a true copy of the Writ of Summons and in fact she had been told by her parents and brother who live at Block G, 9th Floor, Sheung Hong Garden, Sheung Shing Street, Kowloon, Hong Kong, that no such sealed envelope as alleged had been addressed to her and left in the letter box of the said address on or about November 19, 1985.

Chong Jain Chong of Hong Kong deposed that he was the fourth defendant in Suit 1985 No. A 7010 and that he was residing at Block G, 9th Floor, Sheung Hong Garden, Sheung Shing Street, Kowloon, Hong Kong, at the material time and that no such sealed envelope as alleged had been addressed to the Debtor and left in the letter box of the said address on or about November 19, 1985.

The Debtor says that at all material times, she was not carrying on business or was ordinarily resident within the jurisdiction of the original court; that she was merely a "sleeping" director of the said Company; that she took no part in the management of the said Company; that she has at all material times resided at No. 34 Balmoral Park, Singapore 1025 and not in Kowloon and that she believes that the secretary or auditors of the said Company had erroneously stated her address in the Company registration records.

Section 3(2) of the Act provides:

"(2) No judgment shall be ordered to be registered under this section if –

(a) the original court acted without jurisdiction; or

(b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court; or

(c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or

. . . ."

The first point argued by counsel for the Debtor is that the original court had no jurisdiction over the Debtor on recognised principles of international law as the Debtor was not resident in Hong Kong at the time the action was commenced; she is not a Hong Kong Citizen but a Singapore Citizen domiciled in Singapore; and has not expressly submitted to the jurisdiction of the original court. Counsel supports her argument by quoting *Cheshire & North's* "Private International Law" (10th Ed) pages 633 to 644.

It is not in dispute that the judgment obtained by the Creditor in an *ex parte* judgment.

The argument of counsel for the Creditor is that the Debtor by guaranteeing the liability of the said Company to the Creditor in respect of bank facilities accorded to the said Company in Hong Kong has indirectly submitted to the jurisdiction of the original court. He relied on the case of *Blohn* v. *Desser.*[1] In the course of his judgment, Diplock J. (as he then was) sets out the five cases enumerated by Buckley L.J. in *Emanuel* v. *Symon*[2] in which an English court would enforce a foreign judgment and the fifth case is "where he has contracted to submit himself to the forum in which the judgment was obtained" and he said (p.4):

"There may be some doubt whether today it would be held that the jurisdiction exists in the first category of cases, but the other four cases have never been questioned.

It is also, I think, clear law that the contract referred to in the fifth case, to submit to the forum in which the judgment was obtained, may be express or implied.

It seems to me that, where a person becomes a partner in a foreign firm with a place of business within the jurisdiction of a foreign court, and appoints an agent resident in that jurisdiction to conduct business on behalf of the partnership at that place of business, and causes or permits, as in the present case, these matters to be notified to persons dealing with that firm by registration in a public register, he does impliedly agree with all persons to whom such a notification is made – that is to say, the public – to submit to the jurisdiction of the court of the country in which the business is carried on in respect of transactions conducted at the place of business by that agent."

Counsel also relied on *Sfeir & Co.* v. *National Insurance Co. of New Zealand*[3] in which Mocatta J. dealt with section 9(2)(b) of the Administration of Justice Act 1920 (which is *in pari materia* with our section 3(2)(b) of the Act). The learned judge said (p. 339):

"For the plaintiffs, it was further submitted that there was

an implied agreement to submit to Ghanaian jurisdiction because (a) the proper law of the contract of marine insurance was that of Ghana, and (b) the marginal claims payable clause provided for performance within that jurisdiction. Logically, the first question arising under the submission of the plaintiffs is whether the words in section 9(2)(b) "or otherwise submit or agree to submit to the jurisdiction of that court" are wide enough to include an implied submission or agreement to submit. Mr. Mustill argued that they were intended to apply only to express submission or agreements such as are, for example, dealt with in Order 11, r.2 (formerly r.2A) of the Rules of the Supreme Court. I do not, however, see any ground on which I am obliged to give the words of the statute such a limited application and hold that an implied submission or agreement to submit can satisfy the words used."

The conclusion of Diplock J. in *Blohn's* case, that a partner in an Austrian firm who was resident in England took no part in the conduct of the business would be held implied to have agreed to submit to the jurisdiction of the Austrian Court, has been strongly criticised and was rejected by Ashworth J. in *Vogel* v. *R & A Kohnstamm, Ltd.*[4] It was held that an agreement to assent to the jurisdiction of a foreign tribunal could not be implied but must be made expressly. The learned Judge in the course of his judgment referred to *Sirdar Gurdyal Singh* v. *The Rajah of Faridkote* and *Emanuel* v. *Symon (supra)* and he said (p. 1439):

"Those two cases in my view establish the principle that an implied agreement to assent to the jurisdiction of a foreign tribunal is not something which courts of this country have entertained as a legal possibility. Recognising that such an agreement may be made expressly they have in terms decided that implication is not to be relied on."

I am personally of the view that an agreement to submit to the jurisdiction of a foreign tribunal cannot be implied but must be made expressly. In the present case the Debtor has not expressly submitted to the jurisdiction of the original court.

Counsel for the Creditor contends that the Debtor is carrying on business within the jurisdiction of the original court and that this is sufficient to found jurisdiction under the Act. But is the Debtor in fact carrying on business in Hong Kong? True she is a director and shareholder of the said Company. But she is a non-active director. She has no office or place of business in Hong Kong and she is not resident in Hong Kong. I find that she is not carrying on business in Hong Kong.

Was the Debtor duly served with the process of the original court? I find that she was not. The Creditor has in fact not complied with the Rules of the Supreme Court of Hong Kong. Before the Creditor can serve the writ on the Debtor in the manner provided for by Order 10 Rule 1(2)(b), the Debtor must be within the jurisdiction of the original court. The evidence clearly is that the Debtor was not within the jurisdiction of the original court at the time the writ was purported to be served on the Debtor under Order 10 Rule 1(2)(b). The service is therefore bad.

In the result, the Debtor succeeds in her application. I order that the registration of the said Judgment be set aside; and the costs of this application be taxed and paid by the Creditor.

Application allowed.

Solicitors: *Rodyk & Davidson; Khor Thiam Beng & Partners.*

RE S.Q. WONG HOLDINGS (PTE.) LTD.

[O.C.J. (Chan Sek Keong J.C.) May 28, 1987]

[Singapore – Originating Petition No. 66 of 1986]

Company Law – Directors – Duties and powers – Whether exercised in manner oppressive to members' interests – Scope of Companies Act (Cap. 50, 1985 Ed.), s. 216(1)(a) & (b).

Company Law – Shares – Ordinary and preference shares distinguished – Refusal to pay preferential dividends – Whether affairs of company conducted in oppressive manner – Companies Act (Cap. 50, 1985 Ed.), s. 216(1)(a) & (b).

The company in this case was incorporated by Dato S.Q. Wong, a wealthy man on May 18, 1973. The nominal capital was $100,000 divided into 100,000 shares of $1.00 each.

On March 31, 1976, Dato Wong owned all the issued preference shares (90,002) and the children and grandchildren together owned all the issued ordinary shares (48) of the company.

On July 1, 1978, Dato Wong made his last will and testament whereby he appointed Hongkong and Shanghai Bank (Singapore) Trustee Ltd. as the sole executor and trustee and he bequeathed his residuary estate to Mabel Hudson (which included the 90,002 preference shares).

On July 8, 1978, Dato Wong in exercise of his powers as Governing Director removed Alan Wong and Joyce Liu as directors and appointed WPT, Mabel Hudson and WPY as directors with WPT as his deputy.